

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BARRY KELLY and MOLLY KELLY,

Plaintiffs,

vs.

CBS CORPORATION (FKA VIACOM INC.,
FKA WESTINGHOUSE ELECTRIC
CORPORATION), et al.,

Defendants.

Case No. 3:11-cv-03240-VC

**PROPOSED SPECIAL VERDICT
FORM OF PUGET SOUND
COMMERCE CENTER, INC.(FKA
TODD SHIPYARDS CORPORATION)**

WE, THE JURY in the above-entitled action, find the following special verdict on the questions submitted to us:

STRICT LIABILITY

QUESTION NO. 1: Did any of the defendants fail to warn Plaintiff Barry Kelly about the risk of asbestos-related injury from their products?

ANSWER "Yes" or "No" to each defendant

YES

NO

CLEAVER-BROOKS, INC.

CRANE CO.

If you answer Question No. 1 "Yes," as to one or more defendants, then answer Question No. 2.
If you answer Question No. 1 "No," to each defendant, the please skip Question No. 1 and proceed to
Question No. 3.

QUESTION NO. 2: Did this failure to warn about the risk of asbestos-related injury cause damage to
the Plaintiff Barry Kelly?

ANSWER "Yes" or "No" to each defendant	YES	NO
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CLEAVER-BROOKS, INC.	_____	_____
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CRANE CO.	_____	_____
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Please proceed to the next question.

NEGLIGENCE

QUESTION NO. 3: Were any of the defendants negligent in failing to warn Plaintiff Barry Kelly about
the risk of asbestos-related injury?

ANSWER "Yes" or "No" to each defendant	YES	NO
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CLEAVER-BROOKS, INC.	_____	_____
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CRANE CO.	_____	_____
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PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____
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If you answer Question No. 3 "Yes," as to one or more defendants, then answer Question No. 4
as to those defendants.

If you answer Question No. 3 "No," to each defendant, then skip Question No. 4 and please
proceed to Question No. 5 and answer it.

QUESTION NO. 4: Was this negligence a legal cause of damage to Plaintiff Barry Kelly?

ANSWER "Yes" or "No" as to each defendant

YES	NO
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CLEAVER-BROOKS, INC.	_____	_____
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CRANE CO.	_____	_____
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PUGET SOUND COMMERCE CENTER, INC.
(FKA TODD SHIPYARDS CORPORATION)

If you answer Question No. 4 "Yes," as to one or more defendants, then answer the next question. If you answer Question No. 4 "No," then answer the next question.

LOSS OF CONSORTIUM

QUESTION NO. 5: Did any injury to Plaintiff Barry legally caused by any of the defendants result in injury to Plaintiff Molly Kelly?

ANSWER "Yes" or "No" to each defendant	YES	NO
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CLEAVER-BROOKS, INC.	_____	_____
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CRANE CO.	_____	_____
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PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____
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If you answer Question No. 5 "Yes," as to one or more defendants, then proceed to Question No. 6. If you answer Question No. 5 "No," to each defendant, then proceed to Question No. 6.

AFFIRMATIVE DEFENSE - GOVERNMENT CONTRACTOR

QUESTION NO. 6: Did the U.S. Government issue or approve reasonably precise specifications in building the USS Downes or other products at issue?

ANSWER "Yes" or "No" to each defendant	YES	NO
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CLEAVER-BROOKS, INC.	_____	_____
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CRANE CO.	_____	_____
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PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____
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If you answer Question No. 6 "Yes," as to one or more defendants, then proceed to the Question No. 7. If you answer Question No. 6 "No," to each defendant, then skip Questions Nos. 7 - 11, and proceed to Question No. 12.

QUESTION NO. 7: Did the Defendants comply with the reasonably precise specifications regarding installation of asbestos-containing products aboard the USS DOWNES?

ANSWER "Yes" or "No" to each defendant	YES	NO
CLEAVER-BROOKS, INC.	_____	_____
CRANE CO.	_____	_____
PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____

If you answer Question No. 7 "Yes," as to one or more defendants, then proceed to the Question No. 8. If you answer Question No. 7 "No," to each defendant, then skip Questions No. 8 - 11, and proceed to Question No. 12.

QUESTION NO. 8: Did the U.S. Government provide or approve reasonably precise specifications regarding the provision of warnings on the USS Downes?

ANSWER "Yes" or "No" to each defendant	YES	NO
CLEAVER-BROOKS, INC.	_____	_____
CRANE CO.	_____	_____
PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____

If you answer Question No. 8 "Yes," as to one or more defendants, then proceed to the Question No. 9. If you answer Question No. 8 "No," to each defendant, then skip Questions Nos. 9-11, and proceed to Question No. 12.

QUESTION NO. 9: Did the Defendants warn the U.S. Government about those asbestos dangers on the USS Downes, that were known to the defendants, but not the U.S. Government?

ANSWER "Yes" or "No" to each defendant	YES	NO
CLEAVER-BROOKS, INC.	_____	_____
CRANE CO.	_____	_____
PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____

If you answer Question No. 9 "Yes," as to one or more defendants, then proceed to the Question No. 10. If you answer Question No. 9 "No," then skip Questions Nos. 10 and 11, and proceed to Question No. 12.

AFFIRMATIVE DEFENSE - SOPHISTICATED USER

QUESTION NO. 10: If you answered "yes" in response to Questions Nos. 1 & 2 and/or Questions Nos. 3 & 4, as to any defendants, as to those defendants, was Barry Kelly a sophisticated user of asbestos products when he served aboard the USS Downes, meaning that he knew or should have known of the hazards of asbestos on the ship by virtue of his training, experience, employment and other information that was reasonably available to Mr. Kelly?

ANSWER "Yes" or "No" to each defendant	YES	NO
CLEAVER-BROOKS, INC.	_____	_____
CRANE CO.	_____	_____
PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____

If you answer Question No. 10 "Yes," as to one or more defendants, then proceed to Question No. 11. If you answer Question No. 10 "No," then please proceed to Question No. 11.

AFFIRMATIVE DEFENSE - SOPHISTICATED PURCHASER

QUESTION NO. 11: If you answered “yes” in response to Questions Nos. 1 & 2 and/or Questions Nos. 3 & 4, as to any defendants, as to those defendants, was the United States Navy a sophisticated purchaser of asbestos products?

ANSWER “Yes” or “No” to each defendant	YES	NO
CLEAVER-BROOKS, INC.	_____	_____
CRANE CO.	_____	_____
PUGET SOUND COMMERCE CENTER, INC. (FKA TODD SHIPYARDS CORPORATION)	_____	_____

If you answer Question No. 11 “Yes,” as to one or more defendants, then proceed to Question No. 12. If you answer Question No. 11 “No,” then please proceed to Question No. 11.

DAMAGES

QUESTION NO. 12: Without taking into consideration the reduction of damages due to the negligence of Barry Kelly or anyone else, if any, what do you find to be the total amount of damages, including economic and non-economic damages, if any, suffered by the plaintiffs caused by the events involved herein?

As to Barry Kelly

Answer: (a) Economic Damages \$ _____

(b) Non-Economic Damages \$ _____

As to Molly Kelly

Answer: (a) Economic Damages \$ _____

(b) Non-Economic Damages \$ _____

If you answer Question No. 11 “none,” sign and return the verdict. If you answer Question No. 11 with an amount of money, answer Question No. 12.

QUESTION NO. 13: Was Barry Kelly negligent?

Answer "Yes" or "No"

Answer: _____

If you answer Question No. 12 "Yes," then answer the next question. If you answer Question No. 12 "No," skip Question No. 13, and proceed directly to Question No. 14.

QUESTION NO. 14: Was the negligence of Barry Kelly a cause of injury to the plaintiffs?

Answer "Yes" or "No"

Answer: _____

If you answer Question No. 13 "Yes," then answer the next question. If you answer Question No. 13 "No," then answer the next question.

FAULT ALLOCATION

QUESTION NO. 14: If 100% represents the total negligence and fault that was the cause of plaintiffs' damages, what percentage of this 100%, if any, is due to the fault of the following entities listed below?

Answer:

Barry Kelly	_____ %
Cleaver-Brooks, Inc.	_____ %
Crane Co.	_____ %
Puget Sound Commerce Center, Inc. (Todd Shipyards Corp.)	_____ %
United States Navy	_____ %
Johns-Manville	_____ %
All Others	_____ %

Please sign, date, and return this Special Verdict Form.

Dated: _____

FOREPERSON

CERTIFICATE OF SERVICE

I am over 18 years of age and not a party to the within action. I am employed in the County of Alameda; my business address is **Yaron & Associates, 1300 Clay Street, Suite 800, Oakland, CA 94612**

On **April 3, 2015**, I served the within:

PROPOSED SPECIAL VERDICT FORM OF PUGET SOUND COMMERCE CENTER, INCE. (FKA TODD SHIPYARDS CORPORATION)

on all parties in this action, as addressed below, by causing a true copy thereof to be distributed as follows:

TO ALL PARTIES ON THE ECF SERVICE LIST

✕ **VIA ELECTRONIC SERVICE:** I served a true copy, with all exhibits, electronically on designated recipients through PACER. Upon completion of electronic transmission of said document(s), a receipt is issued to serving party acknowledging receipt by PACER's system. Once PACER has served all designated recipients, proof of electronic service is returned to the filing party which will be maintained with the original document(s) in our office. This service complies with CCP §101.6.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on **April 3, 2015**, at Oakland, California.


Edward Cortez
ecortez@yaronlaw.com